effect. The only question is as to their adequacy. Some states have attempted to catch the evil at the source, passing statutes providing for the sterilization of inmates of public institutions. Conn. Pub. Laws 1909, ch. 209; (Ind.) Burns' Ann. St. 1914, sec. 2232. Such legislation has in some cases been held unconstitutional as hopelessly unreasonable in its classification. The argument is that the sub-class, the defectives-in-public-institutions, who are the only ones deprived of their liberty of procreation, are of all the defectives the last to require such deprivation: being under surveillance, and without access to the opposite sex. *Smith v. Board of Examiners* (1913, Sup. Ct.) 85 N. J. L. 46, 88 Atl. 963, followed by the principal case. But it is doubted whether the absurdity excoriated in the opinions exists in fact. Classifications have been sustained on the ground of facilitating administration. *Missouri v. Lewis* (1879) 101 U. S. 22; 25 L. Ed. 989. Certainly the administrative machinery for dealing with inmates of public institutions is the easiest both to create and to run effectively. It may fairly be urged, too, that the worst cases are most likely to be found in the institutions; and perhaps that the state has greater, more immediate responsibility for defectives thrown directly into the state's hands for care and restraint. And it is an unfortunate fact that "once an inmate, always an inmate"—i. e., always under restraint from procreation, is no rule of our institutions. It is believed that any fair investigation of the facts will show—Garrison, J., to the contrary notwithstanding, in *Smith v. Board of Examiners, supra,* at p. 55—that the insufficiency of institutional accommodation to meet the demand does result not only in the turning away from, but in the turning out of the institutions of many uncured and incurable defectives, to make room for more. Surely a law which secures the sterilization of such, while they are under control, before they are lost in the community, is far from showing that flat-footed unreasonableness in its classification which the courts have said is necessary to make them refuse enforcement. See *Booth v. Illinois* (1902) 184 U. S. 425, 22 Sup. Ct. 425.

CONTRACTS—ILLEGALITY—OUSTING COURT'S JURISDICTION.—An article in a bill of lading for maritime shipment from Bordeaux to New York provided that "all litigation arising from the interpretation of the execution of the present bill of lading shall be judged according to French law and by the court of the place indicated on the bill of lading, which court the shippers and the claimants formally declare they accept as competent." A libel was brought in the District Court for the Southern District of New York to recover for short delivery. *Held,* that "the provision . . . by which the Bordeaux court was made the sole forum must be construed as void in this jurisdiction." *Kuhnhold v. Compagnie Generale Transatlantique* (1918, S. D. N. Y.) 251 Fed. 387.

Our courts have been liberal in allowing parties to govern their contract by the system of law of their own choice. Whether the law by which the contract is held governed be that of the place of making, of the place of performance, of the flag, or that which will sustain the contract, the intention of the parties is very generally made the basis of the court's decision as to which law governs. *Home Land & Cattle Co. v. McNamara* (1906, C. C. A. 7th) 145 Fed. 17; *Lloyd v. Guibert* (1865, Ex. Ch.) L. R. 1 Q. B. 115; *Pritchard v. Norton* (1882) 106 U. S. 124, 1 Sup. Ct. 102. Now it seems evident that when a particular system is expressly chosen, the parties' intention can hardly be realized unless the court where suit is brought can adequately interpret the law of the chosen system. And it seems evident that the court best qualified to interpret accurately is a court of the country whose law is chosen to govern. Hence arise such contract provisions as that in the principal case—which, being valid by the law of

France and Germany—can hardly be wholly unreasonable. See Lorenzen, *Cases on Confl. L.*, 394 n. Our courts, however, have been jealous of any attempt to "oust their jurisdiction." The law is settled that a provision which attempts to fix as the sole *forum* another court in a domestic or in a foreign common law jurisdiction, will be disregarded by the court where suit is brought. *Prince Steam Shipping Co. v. Lehman* (1889, S. D. N. Y.) 39 Fed. 704; *Slocum v. Western Assurance Co.* (1890, S. D. N. Y.) 42 Fed. 235; authorities collected (1908) 8 COLUMBIA L. REV. 409. The chief consideration of policy in the earlier cases—which the later seem to follow without over-much consideration—seems to be a fear that the defendants may use such clauses to dodge, with persons and property, out of the chosen jurisdiction and so out of all liability. It may fairly be questioned whether this objection might not be met by holding such fraudulent removal, if proved in another jurisdiction, to waive compliance with that term of the contract; as is done, e. g., in the case of fraudulent removal to prevent notice of dishonor. *Cf. Williams v. Bank of the United States* (1829, U. S.) 2 Pet. 96. And it may be questioned, in any case, whether the injustice done plaintiffs in general by having their debtors skip the jurisdiction of the chosen *forum* is, over and after all, greater than the injustice done defendants by having suits slapped upon them, when unsuspecting and far from home, without adequate means of defence at hand. But when the foreign jurisdiction chosen by the parties is one of the civil law, an additional reason appears for sustaining the provision. New York may well be able to very fairly read the law of Massachusetts. *Cf. Loucks v. Standard Oil Co.* (1918, N. Y.) 120 N. E. 198, (1918) 28 YALE LAW JOURNAL, 67. Even in such cases difficulty is not unknown. But experience shows common law courts to be in the main utterly unable to fairly read and pass on the law of a civil law country. *Cf. Lando v. Lando* (1910) 112 Minn. 257, 127 N. W. 1125; *In re Johnson* [1903] 1 Ch. 821; *Bremer v. Freeman* (1857, P. C.) 10 Moo. P. C. 306. This is not strange; and the inability is mutual; the systems are too unlike in matter and method. To get the benefit of the provision, therefore, which the courts claim to be ready to allow,—*viz.*, choice by the parties of the governing law—the provision for determination of civil law in a civil law court should be respected. And doubly strong is this argument before a court of admiralty, where it has repeatedly been stated that under special circumstances the court will decline to exercise a jurisdiction which they undoubtedly possess, when justice appears much better obtainable by suit in a home port. See *The Belgenland* (1884) 114 U. S. 355, 366, 367. And common law courts have acted on a similar principle. *Mittenthal v. Mascagni* (1903) 183 Mass. 19, 66 N. E. 425. It is submitted that the facts of the present case, in the absence of fraud, might without straining be held to constitute such special circumstances. And the urging of such considerations is, it is further submitted, not untimely or unreasonable in view of the present tendency of our courts to forego their ancient fierce jealousy of letting any controversy escape their determination. The common law no longer nurses its feud against the courts of chancery and admiralty. Arbitration clauses, so long held void for this same reason of ousting jurisdiction, have been made legal in England by statute. Our own courts have been growing restive under the outworn rule of their illegality. See *Delaware Canal Co. v. Pennsylvania Coal Co.* (1872) 50 N. Y. 250, 258-9; *United States Asphalt Co. v. Trinidad Lake Co.* (1915, S. D. N. Y.) 222 Fed. 1006. It is believed that the case for respecting clauses such as that in the principal case is stronger than that for respecting a clause of arbitration. Indeed, as regards causes of action already existent at the time of the agreement, a contract to sue only in a foreign *forum* has already found recognition by the *forum* of attempted suit declining jurisdiction. *Gitler v. Russian Co.* (1908, N. Y.) 124 App. Div. 273, 108 N. Y. Supp. 793. Nor, in view of the above, is the reason clear which distinguishes against the future cause of action.